

## REMARKS

This application presented Claims 1 – 8 of U. S. Patent 6,273,439 (“the Patent”) and Claims 9 – 19 for examination.

By this Reply, Claims 9 and 17 are canceled, and Claims 1, 11, 14, 15, 16, and 18 are amended. No claims are added.

Accordingly, upon entry of this Reply, Claims 1 – 8, 10 – 16, and 18 – 19 are pending.

Entry of this Paper and reconsideration is requested.

As to Claims 1 – 8 of the Patent, Claim 1 is amended to more clearly define the invention over the prior art. Claims 2 – 8 are as in the Patent.

Claim 1 is rewritten in a manner to be restore the claim to a form that is substantially the same as that allowed in the Patent. Further, Claim 1 is rewritten to incorporate, rephrase, and expand upon limitations variously previously presented in Claim 9 relating to the scooter wheels and the rider deck, whereupon Claim 9 is canceled. Finally, Claim 1 is rewritten to recite in greater detail the angular relationship between a head tube, a down tube, the rider deck, the close to vertical angle of the head tube with the deck, and the operability of the scooter by the rider not found in prior art scooters.

Support for these changes is found in the Drawings (see FIGS. 1 and 2) and the Specification (see col. 3, lines 48 – 67 and col. 4, lines 1 – 8).

Claims 11, 14, 15, 16, and 18, previously newly presented in this application, are rewritten to more clearly define the invention over the prior art.

Independent Claims 11 and 14 are rewritten to incorporate certain limitations, which are variously incorporated into Claim 1, to more clearly define the invention and distinguish the invention over the prior art. Claim 14 now incorporates, or rewrites, certain limitations previously presented in dependent Claim 15. Claims 11 and 14, in part, rewrite and/or rephrase the elements and their arrangement relative to the scooter frame, more clearly define the angular relationship of the elements (e.g., the head tube, the down tube, the rider deck), and the benefits attained by the arrangement by the rider when rider propels the scooter and turns the front wheel to steer the scooter. Support for these changes is as found in the FIGS. and the Specification, as detailed hereinabove in connection with Claim 1.

Dependent Claims 15, 16, and 18 are rewritten, in part, by eliminating language now found in Claim 14.

Claims 9 and 17 are canceled without prejudice to advance prosecution, in part because their limitations are now rephrased and/or incorporated into the independent claim from which each depended.

Attention will now be directed to issues raised in the Office Action by the Examiner, in the order the Paragraphs were presented in the Action.

## Claim Rejections – 35 USC 102

In Paragraphs 2 and 3, Claims 1 – 6, 9 – 12, and 14 – 17 stand rejected under 35 USC 102(e) as being anticipated by Fruechtenicht (US 6,279,929 B1), for reasons given.

Applicant's Attorney traverses the Examiner's rejection.

For an anticipation rejection to be proper, each and every limitation required in a claim must be found in exactly the same situation and united in the same way to perform the identical function in a single reference. Fruechtenicht fails in this regard and is not a proper reference upon which to base an anticipation rejection of the noted claims.

Claim 1 requires, *inter alia*, a certain angular relationship between a head tube (and thus the steerable front wheel and front wheel assembly), a down tube, a rider deck, and a fixed rear wheel and rear wheel assembly as well as the position provided for the rider relative to the deck and the ground. In particular, Fruechtenicht does not teach the specific 40°, 110°, and 145° angular relationships of the scooter frame elements, required by Claim 1. Fruechtenicht does not teach that the rider deck be spaced in substantially parallel relationship with and about 4 – 5 inches above the ground. Fruechtenicht does not teach the near vertical relation of the front wheel fork assembly with and placement of the head tube well in front of the front end of the rider deck. In short, Fruechtenicht does not show, teach, or appreciate the benefit of the above requirements of Claim 1 as they contribute to enhance turning movements by the rider.

Claims 11 and 14 are similar to Claim 1, but worded slightly differently. However, Claims 11 and 14 each includes the limitations found in Claim 1 that define over Fruechtenicht. That is, each claim requires the angular relationships and space arrangements of the rider deck and the head tube relative to the rider deck.

Applicant's Attorney submits that the above noted requirements, and perhaps others as well, are not found, shown, or suggested in Fruechtenicht. That is, Fruechtenicht does not anticipate Claims 1, 11, and 14.

Accordingly, the rejection of Claims 1, 11 and 14 under 35 USC Section 102 (e) based on Fruechtenicht should be withdrawn.

Applicant's Attorney submits that Claims 1, 11, and 14 define over Fruechtenicht and are patentable thereover.

Claims 2 - 6, 12, 15 and 16 depend from Claims 1, 11, and 14 and are submitted as being patentable for the same reason that the base claim from which each depends is patentable.

### Claim Rejections 35 USC 103

In Paragraphs 3 – 6, various claims stand rejected under 35 USC 103 as being obvious in view of certain prior art, and thus unpatentable.

Applicant's Attorney traverses the Examiner's 35 USC 103 rejections.

In Paragraph 4, Claims 18 ands 19 stand rejected as being unpatentable over Fruechtenicht, as applied to Claim 14. The Examiner concedes that Fruechtenicht does not disclose the axle-to-axle length required by the claim but contends that Fruechtenicht states that scooter could have a

range of lengths. As such, the Examiner concludes that it would have been obvious to have made the scooter length of Fruechtenicht so as to have the ratio required in Applicant's claims.

Claims 18 and 19 depend from Claim 14 and are submitted as being patentable for the same reason that Claim 14 is patentable.

Further, Applicant's Attorney submits that the Examiner is incorrectly applying the mandates required in making a rejection under 35 USC Section 103 and instead supplies impermissible hindsight to craft the rejection.

Applicant's Specification and claims address the importance of the frame elements having specific angular relationships and the benefits achieved by positioning of the wheel assemblies relative to the rider deck and the rider to ensure that the propulsing leg of the rider does not hit the wheel assembly. Further, such arrangement, as required in Applicant's claims, while seemingly minor, and to the Examiner "obvious", results in an unexpected improvement of performance by tall riders when executing turning maneuvers.

Fruechtenicht is silent in this regard. That the axle length and the scooter of Fruechtenicht could be redesigned wherein to make the axle length longer or shorter is not a teaching upon which obviousness can rest.

The matter of redesign might well destroy the lightweight structure desired by Fruechtenicht. In particular, Fruechtenich teaches (col. 4, lines 33 – 43) that "forming a frame 24 from two or more tubular elements can

provide sufficient strength and impact resistance while reducing the weight and the cost of the vehicle."

In Fruechtenicht, the basic frame of the scooter is comprised of three elongated tubes 24a, 24b, and 24c that extend longitudinally between the opposite ends of the scooter. The medial portions of the tubes support a platform 23 to form a rider deck. Importantly, the rearward end portions of the tubes curve upwardly to form a wheel supporting yoke 30. The forward end portions curve upwardly and their ends welded to a sleeve 14. The weight of a heavy adult rider standing at the center of the deck could well cause the tubes and the deck to deflect and/or place loads on the wheel yoke or on the weld between the sleeve 14 with the forward ends of the tubes, requiring redesign of the frame, such as by using heavier thicker elements and costlier manufacturing steps. Indeed, certain of the materials used by Fruechtenicht are polymeric, to provide lubricity and reduce weight.

The matter of axle ratio is important but Fruechtenicht is silent as to what ratio is needed, without requiring a redesign of the scooter therein disclosed.

Accordingly, Applicant's Attorney submits that the obviousness rejection of Claims 18 and 19 under 35 USC 103, based on Fruechtenicht, is improper and should be withdrawn.

In Paragraph 5, Claim 13 is rejected as being unpatentable under 35 USC 103 over Freuchtnicht, as applied to Claim 12 above, and further in view of Dickson (US-5,992,864 A).

Claim 13 variously depends from Claim 11 and is submitted as being patentable for the same reason that Claim 11 is patentable.

Applicant's Attorney again submits that the Examiner is using hindsight to pick and choose from the prior art only so much as is needed to reject a claim. The Examiner is using Applicant's claim as a road map, contrary to the clear teaching of his references.

Fruechenicht shows (FIGS. 3 – 5) a flat rider deck 23 having upper and lower surfaces, a pair of longitudinally extending flanges extending downwardly from the lower surface, a closure element 22 which seats about the lower surface in closing relation with the flanges, with the flanges and closure element forming three longitudinal passages for passing three tubes 24a, 24b, and 24c between the ends of the deck.

Additionally, Fruechtenicht teaches as follows:

The means forming the lower surface 22 should provide a smooth snag-free surface that is generally lubricious. [specifying polymers] Such materials have the ability to withstand impacts, have a degree of resiliency and can isolate the rider somewhat from the impact when the vehicle is directed into engagement with a ground-supported object, can be formed to provide a smooth snag-free lubricious surface, which is relatively scratch resistant and resistant to breakage, are relatively inexpensive and can be inexpensively formed by processes such as injection molding. [Other materials specified]" (col. 4, lines 14-33)

"While the drawings demonstrate a second means 20 as comprising a framework 24 of tubular members 24a, 24b, 24c bent to provide a supporting framework for a separate platform means 23 and lower surface-forming means 22, the second means can be formed by other means, such as one or more metal plates shaped to provide a platform 21, a smooth snag-free lower surface 22, and the forward portion adapted to connect with and supported by the first means. It is believed, however, that forming a frame 24 from two or more tubular

elements can provide sufficient strength and impact resistance while reducing the weight and the cost of the vehicle and should prove to be preferred.” (col. 4, lines 33 – 43)

Critical to Fruechtenicht is the provision of three unobstructed channels or passageways to pass a respective of the tubes 24a, 24b and 24c. The bottom element or cover plate is to provide a snag-free lubricious surface, and cooperate with the deckplate to provide three longitudinal passageways that extend between the opposite ends of the scooter and permit the tubes to curve upwardly at the forward end, proximate to the handle bar.

There is no suggestion in Fruechtenicht for the provision of a cross-plate for such would prevent the passage of the tubes from end to end. Reconstructing the deck 23 and cover 22 with the cross-plate is not suggested because such reconstruction would destroy the requisite structure.

There is no suggestion that a cross-plate is needed, such as to increase rigidity of the scooter structure. Fruechtenicht teaches that “forming a frame 24 from two or more tubular elements can provide sufficient strength and impact resistance while reducing the weight and the cost of the vehicle and should prove to be preferred”.

Clearly, there is no suggestion or motivation in Freuchtenicht for the reconstruction proposed by the Examiner. Indeed, Fruechtenicht teaches away from any such reconstruction proposed by the Examiner.

Accordingly, the Examiner’s rejection based on a combination of references is believed contrary to the obviousness requirements of 35 USC 103 and the rejection is believed overcome.

Applicant's Attorney submits that Claim 13 is not rendered obvious under 35 USC 103 by the combination of references and is patentable thereover.

In Paragraph 6, Claims 7 and 8 stand rejected under 35 USC 103 as being unpatentable over Fruechtenicht, as applied to Claim 1 above, and further in view of Humlong (US 4,282,993).

Claims 7 and 8 variously depend from Claim 1 and are submitted as being patentable for the same reason that Claim 1 is patentable.

Further, Applicant's Attorney submits that the Examiner's combination of references and reconstruction of Fruechtenicht is impermissible hindsight to reject the claims. That is, the Examiner looks to Applicant's claims, as a road map, to find yet another reference having a feature or element needed to reject the claims. There is no motivation or suggestion in Fruechtenicht for the reconstruction suggested by the Examiner wherein the scooter of Fruechtenicht is provided with an element required by Applicant's claims.

Applicant's Attorney submits that Claims 7 and 8 define patentably over the combination of references proposed by the Examiner.

### Conclusion

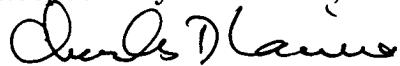
Various of the Claims herein have been amended in a manner to clarify the invention and more clearly define the invention over the prior art.

Claims 1 – 8, 10 – 16, and 18 – 19 are submitted as being patentable over the prior art and in condition for allowance.

A Notice of Allowance of all claims pending herein is respectfully requested.

If the Examiner believes that a telephone conference would advance the prosecution of this application, he is encouraged to contact this Attorney, or Mr. Arnold S. Weintraub, Reg. No. 25523, at the number listed below.

Respectfully submitted,



Charles D. Lacina, Reg. No 28094

Attorney for Applicant

The Weintraub Group, PLC

32000 Northwestern Highway, Suite 240

Farmington Hills, MI 48334

(248) 865 – 9430 · Direct Dial

(248) 865 – 9436 · Facsimile

Date: Thur Dec. 29, 2005